

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

SB 564 (Cannella) – As Amended June 16, 2016

SENATE VOTE: Vote not relevant

SUBJECT: West Kings Groundwater Sustainability Agency Act.

SUMMARY: Creates the West Kings Groundwater Sustainability Agency, specifies the Board composition of the Agency, and adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies to comply with the Sustainable Groundwater Management Act. Specifically, **this bill:**

- 1) Establishes the West Kings Groundwater Sustainability Agency Act (Act) and creates the West Kings Groundwater Sustainability Agency (Agency) within the Counties of Fresno and Kings.
- 2) Adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with the Sustainable Groundwater Management Act (SGMA).
- 3) Specifies the Agency's governing board, consisting of seven (7) members, as follows:
 - a) One (1) member shall be chosen by the County of Fresno;
 - b) One (1) member shall be a resident or landowner chosen by the members of the governing board of the following entities:
 - i) Clark's Fork Reclamation District;
 - ii) Laguna Irrigation District; and,
 - iii) Upper San Jose Water Company;
 - c) One (1) member shall be chosen by the member of the governing boards of the following special districts that provide drinking water, who shall be chosen from the members of the governing boards of the special districts:
 - i) Laton Community Services District; and,
 - ii) Riverdale Public Utility District.
 - d) One (1) member shall be a resident or landowner chosen by the members of the governing boards of the following entities:
 - i) Crescent Canal Company; and,
 - ii) Stinson Canal and Irrigation Company.

- e) One (1) member shall be a resident or landowner chosen by the members of the governing boards of the following entities:
 - i) Burrel Ditch Company; and,
 - ii) Liberty Canal Company.
- f) One (1) member shall be a resident or landowner chosen by the members of the governing boards of the following entities:
 - i) Liberty Mill Race Company; and,
 - ii) Reed Ditch Company.
- g) One (1) member shall be chosen by the members of the governing boards of the following special districts, who shall be chosen from the members of the governing boards of the special districts:
 - i) Liberty Water District; and,
 - ii) Riverdale Irrigation District.
- 4) Requires there to be an alternate for each board member, chosen in the same manner and by the same entities as the board member. The alternate member shall act in place of the board member he or she is an alternate for in case of that board member's absence or inability to act.
- 5) Requires the members to serve for a four-year term of office. Allows a member to serve for more than one term of office.
- 6) Allows the Board to adopt an ordinance to provide compensation to members of the Board in an amount not to exceed \$100 per day for each day's attendance at meetings of the Board or for each day's service rendered as a member of the Board by request of the Board.
- 7) Allows the Board to adopt an ordinance to increase the compensation received by members of the Board above the amount of \$100 per day. Prohibits a Board member from being compensated for more than a total of 10 days in any calendar month.
- 8) Allows the board to adopt ordinances for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the territory of the Agency.
- 9) Specifies that an ordinance adopted by the Board shall become effective 30 days from the date of its passage.
- 10) Requires all ordinances to be adopted at noticed, public hearings by a majority vote of the Board. Prohibits any ordinance from being adopted by the Board, except at a public hearing. Requires notice of the hearing to be published in a newspaper of general circulation, as specified.

- 11) Provides that no provision of this Act shall be construed as denying to any member agency any rights or powers that they already have or that they may be granted.
- 12) Allows the Agency to contract with member entities for staff and other services. Allows the Agency to hire contractors and consultants as it considers appropriate.
- 13) Requires the Agency to enter into a coordination agreement with other local agencies for purposes of coordinating the Agency's plan with other agencies or groundwater sustainability plans with the Kings Subbasin, as required by the SGMA.
- 14) Allows the Agency to exclude from any of the requirements of this Act, or the operation of any ordinance, any operator who annually extracts less than a minimum amount of groundwater, as specified by an ordinance adopted by the Board.
- 15) Allows the Agency to collect data and conduct technical and other investigations of all kinds in order to carry out the provisions of this Act. Requires all hydrological investigations and studies carried out by or on behalf of the Agency to be constructed by or under the supervision of licensed engineers or other persons qualified in groundwater geology or hydrology.
- 16) Allows the Agency to recommend and encourage water recycling and other water development projects, where those projects will enhance and contribute to the responsible management of groundwater resources, as part of its annual plan for implementation of groundwater management objectives.
- 17) Requires the Agency to develop and implement a groundwater sustainability plan, pursuant to existing law, to achieve sustainable groundwater management within the territory of the Agency.
- 18) Requires the Agency to elect to be a groundwater sustainability agency, pursuant to existing law, for that portion of the Kings Subbasin that lies within the boundaries of the Agency.
- 19) Allows the Agency to exercise specified powers, pursuant to SGMA.
- 20) Allows, pursuant to SGMA, the Agency to impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, that include, but are not limited to, the preparation, adoption, and amendments of a groundwater sustainability plan, investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.
- 21) Specifies the Agency's boundaries and provides that the Agency's initial boundaries shall be established by the Boards of Supervisors of the Counties of Fresno and Kings after a noticed public hearing. Requires the boundaries to be depicted on a map that shall be adopted by the Boards of those counties and thereafter recorded in the office of the county recorder of each county. Allows the Boards to adjust the boundaries of the Agency in the same manner prescribed for in establishment of the initial boundaries if the boundaries of the basin are revised, including the establishment of new subbasins.

- 22) Declares that the availability of supplemental water to any operator shall not subject that operator to regulations that are more restrictive than those imposed on other operators.
- 23) Specifies that the Agency shall only exercise the powers granted by this Act and the SGMA for purposes of groundwater management within the boundaries of the Agency, together with any other powers as are reasonably implied, necessary, and proper to carry out the objectives and purposes of the Agency to implement the SGMA. Requires the Agency to abide by the rules and regulations promulgated by the Department of Water Resources (DWR) and the State Water Resources Control Board (Water Board) to implement the SGMA.
- 24) Defines terms, as follows:
- a) “Actively and primarily engaged in production of agriculture” to mean that a person derives at least 75% of his or her annual income from production agriculture;
 - b) “Agency” to mean the West Kings Groundwater Sustainability Agency;
 - c) “Aquifer” to mean a geologic formation or structure that transmits water in sufficient quantities to supply pumping wells or springs;
 - a) “Basin” to mean a groundwater basin or subbasin identified and defined in the Department of Water Resources’ “California Groundwater: Bulletin 118” updated in 2003, as it may be subsequently updated or revised, as specified;
 - b) “Board” to mean the Board of Directors of the Agency;
 - c) “Coordination agreement” to mean a legal agreement adopted between two or more groundwater sustainability agencies that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin;
 - d) “County” to mean either the County of Fresno or the County of Kings, as the context requires. “Counties” to mean the County of Fresno and the County of Kings;
 - e) “Extraction” to mean the act of obtaining groundwater by pumping or other controlled means;
 - f) “Groundwater” to mean water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels;
 - g) “Groundwater management activities” to mean programs, measures, or actions taken to preserve, protect, and enhance groundwater resources within the territory of the Agency;
 - h) “Kings Subbasin” to mean the San Joaquin Valley Groundwater Basin Kings Subbasin;
 - i) “Member” to mean any person or entity entitled to representation on the Agency’s Board of Directors;

- j) “Operator” to mean a person operating a groundwater extraction facility. The owner of a groundwater extraction facility shall be conclusively presumed to be the operator, unless a satisfactory showing is made to the governing body of the groundwater sustainability agency that the groundwater extraction facility actually is operated by some other person;
 - k) “Person” to include any state or local governmental agency, private corporation, firm, partnership, limited liability company, individual, group of individuals, or, to the extent authorized by law, any federal agency;
 - l) “Plan” to mean a groundwater sustainability plan prepared by the Agency; and,
 - m) “Supplemental water” to mean surface water or groundwater imported from outside the watershed or watersheds of the basin or aquifer and floodwaters that are conserved and saved within the watershed or watersheds that would otherwise have been lost or would not have reached the basin or aquifer.
- 2) States that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, as specified.
- 25) Makes findings and declarations.

EXISTING LAW:

- 1) Establishes the Sustainable Groundwater Management Act (SGMA) to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater.
- 2) Requires, by January 31, 2020, all basins designed as high- or medium-priority basins by DWR that have been designated in Bulletin 118, as may be updated or revised on or before January 1, 2017, as basins that are subject to critical conditions of overdraft, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
- 3) Requires, by January 31, 2022, all basins designed as high- or medium-priority basins by DWR that are not subject to 2), above, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
- 4) Allows any local agency or combination of local agencies overlying a groundwater basin to elect to be a groundwater sustainability agency for that basin, except as specified.
- 5) Requires the local agency or agencies to hold a public hearing in the county or counties overlying the basin, prior to electing to be a GSA, and to provide specified notice of that hearing, pursuant to existing law.
- 6) Requires a local agency or combination of local agencies that elects to be the GSA to submit a notice of intent to DWR, as specified.

- 7) Allows a combination of local agencies to form a GSA by using any of the following methods:
 - a) A joint powers agreement (JPA); or,
 - b) A memorandum of agreement (MOA) or other local agreement.
- 8) Requires a groundwater sustainability plan to be developed and implemented for each medium- or high- priority basin by a GSA to meet the sustainability goal established, pursuant to SGMA.
- 9) Specifies that a GSP may be any of the following:
 - a) A single plan covering the entire basin developed and implemented by one GSA;
 - b) A single plan covering the entire basin developed and implemented by multiple GSAs; or,
 - c) Multiple plans implemented by multiple GSAs and coordinated, pursuant to a single coordination agreement that covers the entire basins, as specified.
- 10) Allows the State Water Board, after notice and public hearing, to designate a basin as a probationary basin, if the board makes certain specified findings.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Local Groundwater Management and the Sustainable Groundwater Management Act (SGMA).** The Legislature passed SGMA (SB 1168 (Pavley), AB 1739 (Dickinson) and SB 1319 (Pavley), Statutes of 2014), creating a statewide requirement to sustainably manage groundwater resources. The package of bills was signed by Governor Brown with the objective to ensure the long-term reliability of groundwater resources and connected surface water resources by requiring sustainable management. Groundwater Sustainability Agencies (GSAs) must be formed by 2017, Groundwater Sustainability Plans (GSPs) for critically overdrafted basins must be written by 2020, and sustainability must be reached by 2040. Prior to 2014, there was no statutory mandate to manage groundwater in California.

Prior to SGMA, there were several ways that groundwater was managed at the local level. A local agency that provided water service was authorized to develop and implement a groundwater management plan, known as an AB 3030 plan. The Legislature also created a number of “special act special districts” that addressed groundwater management – these local agencies were created via statute to establish unique governance structures and grant powers that were customized to the problems and solutions of a particular groundwater basin. The acts creating these special act districts are located in the Water Appendix.

Local Control and Governance Options under SGMA. SGMA requires local entities in medium- and high-priority basins to establish GSAs by June 2017, to avoid state intervention. GSAs must self-identify by June 30, 2017, to the DWR, and can include a city,

a county, a special district, or a combination of these agencies organized via a legal agreement, like a JPA or MOA. One agency can form a GSA for the entire basin, or multiple agencies can form individual GSAs and coordinate for basin sustainability. There are multiple options for local agencies to manage groundwater under SGMA, including alternatives to forming a GSA and developing a GSP. SGMA does not specify exactly how GSAs should govern local groundwater resources to achieve sustainability goals.

All groundwater basins designated as medium- or high-priority and identified as subject to critical conditions of overdraft must be managed under one or more GSPs by January 31, 2020. The deadline is two years later (January 31, 2022) for other medium- or high-priority basins. The goal of the GSPs is to achieve operation within the basins' sustainable yield within 20 years of plan implementation.

Because of the June 30, 2017, date to have GSAs in place, the timeline for local agencies to make decisions on management at the local level, and governance, is very short.

- 2) **Bill Summary.** This bill creates a special act district called the West Kings Basin Groundwater Sustainability Agency, and requires the Agency to be the GSA under SGMA for that portion of the Kings Subbasin that lies within the boundaries of the Agency, and would require the Agency to develop and implement a GSP to achieve sustainable groundwater management within the territory of the Agency. The bill additionally specifies the powers and purposes of the Agency, and prescribes the composition of the seven-member board of directors of the Agency, including the terms, how the members are chosen, and their compensation and reimbursement. The bill also adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with SGMA.

This bill is sponsored by the West Kings Basin Groundwater Coalition.

- 3) **Author's Statement.** According to the author, "It was the expressed intent of the Legislature in writing SGMA to "manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner" [subdivision (h), Section 10720.1, Water Code].

"This legislation, in creating a special act agency to serve as the groundwater sustainability for an area encompassing 265 square miles, is fully consistent with legislative intent for a number of reasons. First, the portion of the basin to be covered by the GSA would not contain any so-called "white areas" as the territory of the GSA would cover the entire area. Second, this is important because significant acreage in the territory is not served by local agencies, but by mutual water companies. The special act agency would include in its governing body traditionally disparate interests, including representatives appointed by the principal land use agency, local agencies providing drinking water to disadvantaged communities, local agencies providing farm water supplies and mutual water companies that provide farm water supplies. Mutual water companies would not be a member of the GSA, but a representative of a mutual water company may be appointed to serve on the governing body.

“The goal of this legislation is to provide ‘a seat at the table’ for all of the entities that have a stake in sustainable groundwater management in this area. This approach offers the best governance model for achieving sustainable groundwater management in this area. A GSA that consists of only local agencies would require other interested parties to participate only through attending meetings and reviewing and commenting on the development and implementation of the groundwater sustainability plan. It will be far better to provide equal and equitable access to the decision making process.”

4) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Mutual Water Company Involvement.** This bill allows for several mutual water companies to have a say in choosing board members, and for the board members to either be a “resident” or a “landowner.” Essentially, the bill allows several of the seven-member board to be representatives of mutual water companies.

SGMA specifically allows any local *public* agency or combination of local agencies to elect to be a GSA for that basin or subbasin. In this manner, SGMA places requirements on local *public* agencies.

Most mutual water companies are organized, pursuant to the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. Shareholders in a mutual water company hold a right to purchase water from the company. Stock in a company is usually linked to the ownership of a parcel served by the company and transfers with the land when the parcel is sold to successive owners. This type of corporate structure allows landowners to establish, essentially, a customer-owned water provider to serve their properties. State law exempts a mutual water company from state regulation if it is organized to deliver water to its stockholders and members, with specified exceptions. Governance of a mutual water company is generally limited to shareholders, or members, of the company. While the details of any particular company’s governing structure are determined by its articles and bylaws, most mutual water companies allow only shareholders and members to vote on organizational matters and serve on the company’s governing board.

The Committee may wish to consider the policy of allowing certain mutual water companies to have the power to appoint representatives to the West Kings GSA’s Board, and whether that runs contrary to the legislative intent of SGMA.

- b) **Other Alternatives to Special Act District.** The Committee may wish to ask the author to discuss why other local management options (JPA, MOA, electing to have an existing district serve as the GSA) do not suffice.

- 5) **Arguments in Support.** According to the supporters, it is the intent of all the interested parties to work collaboratively to solve the groundwater issues in the region and to develop the governance structure that will facilitate implementing a groundwater sustainability plan.
- 6) **Arguments in Opposition.** None on file.
- 7) **Double-Referral.** This bill is double-referred to the Water, Parks and Wildlife Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Burrel Ditch Company
Clark's Fork Reclamation District #2069
Crescent Canal Company
Laguna Irrigation District
Liberty Canal Company
Liberty Mill Race Co.
Liberty Water District
Reed Ditch Company
Riverdale Irrigation District
Riverdale Public Utility District
Stinson Canal & Irrigation Co.
Upper San Jose Water Company

Opposition

None on file

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